

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 5/27/11

VFS FINANCING, INC.,

Plaintiff,

-against-

MARSHALL AVIATION, LLC, MTM
ENTERPRISES, INC. & BRIAN M. MARSHALL,

Defendants.

09 Civ. 8943 (DAB) (AJP)

ORDER

ANDREW J. PECK, United States Magistrate Judge:

1. Defendant Brian M. Marshall was advised to appear telephonically at today's conference. (See Dkt. No. 25: 5/18/11 Order.)^{1/} He did not call in, and the Court's call to his telephone number was not answered. Accordingly, he is sanctioned \$1,000, payable to the Clerk of Court by June 17, 2011. (See also today's transcript.) Marshall is to provide proof of payment to my chambers.

2. The pretrial order for the issues remaining for trial after my Report and Recommendation (see ¶ 3 below) is due by June 17, 2011. If Mr. Marshall does not submit his portion of the pretrial order by that date, his answer will be struck and a default judgment will be entered against him.

^{1/} The Order was sent to Marshall by certified mail, the delivery receipt was signed and returned, and in addition the Order was emailed to him at the email address provided by his former counsel, and the Order was read into his telephone answering machine.

3. For the reasons stated on the record at today's conference (the transcript of which is being provided to Marshall by plaintiff's counsel), this Court holds, on a Report and Recommendation basis, that plaintiff VFS's summary judgment motion (Dkt. No. 18) should be granted in part and denied in part. Specifically, VFS is entitled to summary judgment finding Marshall liable under the Guaranty, in the amount of \$15,083,310.58 principal plus interest of \$126,922.35 through June 22, 2008. Summary judgment should be denied as to whether VFS used commercially reasonable measures to sell the aircraft (and therefore also as to the computation of interest, at the 18% contractual default rate, since June 23, 2008). The Court's reasoning is set out in today's transcript.

SO ORDERED.

Dated: New York, New York
May 27, 2011



Andrew J. Peck
United States Magistrate Judge

Copies to: Joshua B. Urist, Esq. (Fax)
Brian M. Marshall (Regular & Certified Mail, Email)
Judge Deborah A. Batts